D.B. CIVIL SPECIAL APPEAL (W) NO.744/2006
State of Rajasthan Vs. Ambalal & Anr.

Date : 15.5.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. L.R. Upadhyay, Dy. Government Advocate.
Mr. V.N. Kalla for the respondents.

BY THE COURT:- (PER HON'BLE RAJESH BALIA, J.)

Heard learned counsel for the parties.

This appeal is directed against the judgment of learned Single Judge dismissing the writ petition filed by the appellant against the award of Labour Court dated 18.10.2001 holding that the termination of respondent Amba Lal from the post of Lab Boy to be invalid and directed his reinstatement as Lab Boy with continuity of service without back wages.

The facts of the case are that the respondent-workman was in the first instance appointed

as a part time daily wager on 27.7.1990 on a fixed salary of Rs.364/- per month. On 5.2.1992, he was appointed as a Lab Boy in the pay scale of Rs.775-1025. The minimum qualification required for Lab Boy is that the incumbent must have passed middle school examination. The petitioner was required to furnish the original document of his eligibility criteria and having failed to produce the original of the eligibility criteria, the petitioner's service was terminated. As the workman has failed to produce the originals of the eligibility qualification certificates for verification, despite opportunity having been given to him, his services were terminated inter alia on the ground that since he is ineligible to hold the post, he cannot be continued in service.

The termination dated 5.11.1992 was made subject matter of Industrial Dispute. In his claim before the Labour Court, the workman did not show that he was eligible to hold the post of Lab Boy. His only case was that he has not concealed material about his qualification from his employer, but the employer has

appointed him as Lab Boy by way of promotion and if he is found to be ineligible to hold the post of Lab Boy, he may be reappointed as a peon.

In reply to the aforesaid claim, the employer clearly stated that the workman has made an application along with the copies of eligibility certificate requesting that he may be appointed on the post of Lab Boy and if he is appointed, he will produce original documents. After giving him appointment, the petitioner was given opportunity to produce the original documents of his eligibility but he failed to do so. Therefore, his services were terminated as aforesaid. It was also asserted that he was removed from the service because he was not holding the eligibility criteria. In reply, it was also stated that since he has failed to produce the original documents of the copies produced along with the application, the copies produced before the authority was forged one else he could have produced the original one.

In the affidavit submitted on behalf of the

employer, it was stated that the workman has submitted an application along with the copy of mark sheet of 8th standard examination and TC, it is on the basis of those documents, he was offered appointment but when he was unable to produce originals of the same, despite giving opportunity, the services were terminated. It was also stated that his services were terminated only on the ground that he was not holding eligibility criteria for the Lab Boy. Had he eligible for holding the post of Lab Boy he would have been allowed to continue.

In his statement, the workman stated as under:-

> "मैं तीसरी चौथी कक्षा तक ही पढा हुआ हू अंतिम बार सन 69-70 में हेमराज राष्ट्रीय व्यायाम शाला रावजी का हाटा में पढा था मै आठवी तक कभी नहीं पढा हू विभाग में मैने आठवी कक्षा का कभी कोई प्रमाण पत्र फोटो स्टेट भी नहीं दिया मै विभाग मे सन 90 से सन 92 तक अपरासी का भाडू निकालना व सफाई इत्यादि का काम करता था लेबोरेटरी मे कभी काम नहीं किया। लेबोरेटरी मे झाडू निकालता था मुझे शांति बाबूजी ने जेब बाय

बनवा दिया। 7-8 महिने तक मैंने काम किया।"

On the basis of this material, the Labour Court in its award dated 18.10.2001 also found that in getting appointment, the conduct of applicant is questionable. He has not disclosed full material about his required qualification as per the conditions laid by Zila Parishad, Udaipur and has also concealed the correctness of his documents. That he has not produced original of the documents produced by him along with the application. That he has not produced the original documents even when for the reasons of non-production of such documents, his services were terminated nor before the conciliation officer and not before the Labour Court and he is trying to be in Government service. Notwithstanding these facts emanating from the statement of workman himself the Labour Court found that termination was illegal and his services have been terminated without holding any enquiry. He also found that since the workman has worked for 240 days and his services have been

terminated without compliance of the provisions of Section 25F so his termination resulted in illegal retrenchment and directed his reinstatement on that basis on the post of Lab Boy. He has also referred to the fact that those persons, who have been appointed as a part time daily wager prior to 25.8.1995 had been regularized later on while reinstating the workman with continuity of service no back wages has been awarded on the finding that the workman was without employment during the period the termination order was in effect.

The learned Single Judge had dismissed the writ petition filed by the State challenging the award inter alia on the ground that the writ petition is covered by the decision of the learned Single Judge in S.B. Civil Writ Petition No.312/2003 – State of Rajasthan Vs. Chhotu Lal and others. Hence, this appeal.

From the admitted narration of the fact it is apparent that in this case the petitioner secured appointment as Lab Boy without holding necessary

qualification to hold that post by producing mark sheet of 8th class and TC from the school where he has alleged to have studied.

On the face of these findings, the relief of reinstating the workman was one which no person reasonably instructed in fact and law would hold the termination to be illegal. To hold otherwise will be to allow a person to continue to hold a post for which he has no eligibility. He had claimed falsely that he had not secured any appointment to the post by making application. He did make an application for such appointment which is on record and though he knew that he was not eligible to hold the post, he submitted copies of marksheet showing him to be eligible. On admitted case, it was a case of seeking appointment by furnishing wrong information.

We are of the opinion that on the face of statement of the workman himself and the finding recorded by the Labour Court, no relief by directing reinstatement could have been granted when ineligibility

of the incumbent to hold the post was writ large.

So far as the relief on the basis of previous appointment as a part time wager is concerned and reference to the provisions of Section 25F and 25H are concerned, are wholly unwarranted in the present case.

In that view of the matter by sustaining relief with reference to the provisions of Section 25 F and 25 H of the Industrial Disputes Act was not possible and is not possible. The fact that those workmen, who had continued as part time wagers and were regularized in 1995 can also be of little assistance to the workman inasmuch as the respondent-workman having secured appointment on the post of Lab Boy, he did not continue in service as a part timer nor could he revert to it automatically.

In that view of the matter, the appeal must succeed. The order of learned Single Judge is set aside. The award of Labour Court on its own finding cannot be sustained and same is accordingly quashed. The writ

petition is allowed. No order as to costs.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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